



National Immigrant Justice Center

27 April 2011

Catrina M. Pavlik-Keenan, FOIA Officer
Immigration and Customs Enforcement
Freedom of Information Act Office,
800 North Capitol Street, NW, Room 585
Washington, DC 20536

Dear Ms. Pavlik-Keenan:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552. We request any and all records in the custody or control of the U.S. Department of Homeland Security ("DHS"), including the Immigration and Customs Enforcement ("ICE") and its branch for Enforcement and Removal Operation ("ERO") (or its predecessor the Office of Detention and Removal, "DRO"), which fit the following description:

1. Please provide copies of all intergovernmental service agreements ("IGSAs") executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
2. Please provide copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;¹
3. As to any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
4. Please provide copies of all contract detention facility agreements ("CDFs") currently in effect to house immigrant detainees at any privately-owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
5. Please provide copies of all current agreements or Memorandums of Understanding ("MOUs") with any other federal entity to house immigrant detainees;
6. Please provide copies of all records related to reviews, audits, and inspections conducted by DHS/ICE/ERO or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group;

¹ We understand that many agreements signed by other federal agencies specifically authorize and envision that immigrant detainees will be held pursuant to those agreements.

or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;

7. Please provide copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to the present. Please also provide worksheets, evaluations and/or criteria requirements for any review, audit, or inspection conducted by DHS/ICE/ERO or by any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and
8. Please provide any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, through the present.

Electronic versions of the requested documents on compact discs are preferred. Please produce with the records any metadata and load files, so that the records can be accessed, searched, and displayed in a manner comparable to an ICE user. If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your response to this FOIA request should also be considered within the scope of the request. Please provide data that is current as of the day of production of the data.

If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each item of data. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). To the extent that materials are excised, please “black out” these materials, rather than “whiting out” or “cutting out” these materials. We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i). Please reply to this request within twenty working days, or as required by statute. *Id.*

Fee Waiver

The Requester is entitled to a waiver of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requester’s] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution). The Requester has a proven track-record of compiling and disseminating information to the public about government functions and activities. We intend to make your response – and an analysis thereof – publicly available on our website, www.immigrantjustice.org. The issue of immigration detention is one of significant public interest generally, and the issue of how the federal government interacts with state and local governments in maintaining the federal immigration detention regime is of significant interest particularly. The Requester has undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal

immigration detention policies and practices. Access to this information is a prerequisite for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, and the public has an interest in knowing about the manner in which the federal government involves state and local entities in the federal immigration detention system. The Records sought in this request will inform the public of the scope and effect of the government's collaboration with local detention facilities.

As stated above, the Requester has no commercial interest in this matter. The Requester will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before fulfilling this request. We note that under FOIA, an agency may only charge "reasonable standard charges for document duplication," and not search-related costs, to "a representative of the news media." Under the 2007 amendments to FOIA, "a representative of the news media," means "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(6)(A)(ii). "News" means "information that is about current events or that would be of current interest to the public." Examples of news media entities includes "alternative media" that disseminate their publications for free "through telecommunications services," i.e., the internet. As noted above, NIJC has a track record of turning raw material into reports and other publications for distribution to the general public, which it does at no charge. Because NIJC qualifies as "a representative of the news media" under the revised statutory definition, you should not charge NIJC any search-related costs for this FOIA request. Should you have any questions regarding NIJC's work in gathering information and using editorial skills to digest or distribute that information to the general public, please advise me, and I will be happy to provide examples and explanation.

In the alternative, the Requester seeks all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). The Requester agrees to pay for the first 100 pages of duplication. See 6 C.F.R. § 5.11(d). The Requester agrees to pay search, duplication, and review fees up to \$200.00. If the fees will amount to more than \$200.00, the Requester requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). If no fee waiver is granted and the fees exceed \$200.00, please contact the Requester at the telephone number below to obtain consent to incur additional fees.

Certification

The Requester certifies that the above information is true and correct to the best of the Requester's knowledge. See 6 C.F.R. § 5.5(d)(3). If you have any questions regarding this request, please feel free to call me at my direct line, 312-660-1608.

Sincerely,

Claudia Valenzuela
(Tel.): 312-660-1308
(Fax): 312-660-1505
(Email): cvalenzuela@heartlandalliance.org